

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ANGEL DAVID MORALES-VALLELLANES

Plaintiff

v.

UNITES STATES POSTAL SERVICE, et
al.

Defendants

CIVIL NO. 97-2459 (GAG/CVR)

RESPONSE TO PLAINTIFF'S INFORMATIVE MOTION

TO THE HONORABLE COURT:

COME NOW the Defendants and through the undersigned attorneys respectfully submit a response to plaintiff's "Informative Motion" related at **D.E. 378**.

At the outset, plaintiff's **D.E. 378** is confusing. On the one hand, the plaintiff "informs" the Court and, on the other hand "requests" from the Postal Service that the latter cover the fees required by 28 U.S.C. §1821 for the postal employees who are to be subpoenaed to appear in Court for trial on behalf of the plaintiff. As grounds for plaintiff's so called "Informative Motion", he submits the Postal Service's Employee Labor Relations Manual or ELM

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Sections 516.11 through 516.60. (hereinafter the "Employees' Manual").

In order to set the record straight and avoid any confusion, the defendant has no objection to plaintiff's issuance of subpoenas to postal employees for them to appear in Court on plaintiff's behalf. Such scenario is covered as court leave at the Employees' Manual. (**See Sections 516.21 and 516.60.**) However, one thing is for the Postal Service to grant court leave to those employees and another is to pay them the attendance fees required by 28 U.S.C. § 1821. The latter is covered by **Section 516.41** of the Employees' Manual. In it, from the \$40.00 a day plus mileage required by 28 U.S.C. §1821, the postal employees can keep up to \$25.00 per day while the rest is to be handed over to their supervisors. **The employee is not authorized to waive those fees. (See Section 516.41 of the Employees Manual.)** In other words, the party who

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seeks a witness attendance to Court on his/her behalf, must accompany with the subpoena, the \$40.00 a day plus mileage attendance fee and, that amount belongs to the witness. However, if he/she is a postal employee, then he/she can keep up to \$25.00 per day and must deliver the rest to his/her supervisor. In no place at the Employees' Manual does it state that the Postal Service has the obligation to pay the \$40.00 attendance fee to the witness in addition to the court leave granted to the postal employee in order for them to appear in Court on plaintiff's behalf.

In summation, a postal employee (part time or full time) who is issued a subpoena to testify in Court on behalf of the plaintiff when the Postal Service is a party to the case, as in here, is entitled to receive from the Postal Service, court leave for him/her to appear in Court and, from the issuing party of the subpoena, \$40.00 per day plus mileage under 28 U.S.C. §1821 before

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attendance to Court is to materialize. If plaintiff's intention at his so called "Informative Motion" was to "request" from the Postal Service that it pay the appearing witnesses the attendance fees set forth at 28 U.S.C. § 1821, then his request is hereby denied, as hereinabove set forth.

WHEREFORE, the Defendants respectfully request from this Honorable Court that it take notice of the foregoing response to plaintiff's **D.E. 378**.

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Miguel Miranda, Esq.

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RESPECTFULLY SUBMITTED in San Juan, Puerto Rico this 19th day

September, 2007.

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